IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

THURSDAY, THE 14TH DECEMBER 2006 / 23RD AGRAHAYANA 1928

WP(C).No. 29194 of 2006(A)

PETITIONER:

SHAHUL HAMEED, SUBADAR PHARMACIST,
C/O.56/APO.167 MH, PATHANKOT,
REPRESENTED BY HIS POWER OF ATTORNEY HOLDER
SUBEER KUNJU, OTTATHENGIL HOUSE,
PERUMONTHAZHA MURI, VARAVILA P.O.,
KARUNAGAPPALLY, KOLLAM.

BY ADV. SRI.P.B.SURESH KUMAR

RESPONDENTS:

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1. OACHIRA GRAMA PANCHAYAT,
OACHIRA, REPRESENTED BY ITS SECRETARY.

2. SECRETARY, OACHIRA GRAMA PANCHAYAT
OACHIRA.

3. TALUK SURVEYOR, KARUNAGAPPALLY,
KOLLAM DISTRICT.

4. ASSISTANT EXECUTIVE ENGINEER
(BUILDINGS) KARUNGAPALLY, KOLLAM.

5. SULOCHANA, HOUSE NO.17,
LAKSHAMVEEDU COLONY, CHANGANKULANGARA,
OACHIRA P.O., KOLLAM DISTRICT.

BY ADV. SRI.B.HARISH KUMAR
SRI.LIJU. M.P

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 14/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PIUS C.KURIAKOSE, J.

W.P.(C)NO. 29194 of 2006

Dated this 14th day of December, 2006

JUDGMENT

Two objections were originally raised by the Panchayat when the construction of the building of the petitioner reached its foundation level, by Ext.P1 notice. First one was that the on going construction was in violation of Section 220 (b) of the Panchayat Raj Act and the other was that the construction will endanger the life and property of Smt.Sulochana, who is the 5th respondent in this writ petition. By Ext.P4, this court directed the Panchayat to refer the matter to the Surveyor and also to the Assistant Executive Engineer, PWD and take a fresh decision. The Surveyor reported that the objection that the construction will offend Section 220 (b) was not correct. In Ext.P6 by the Asst. Executive Engineer it was reported that the demolition of the existing building by the petitioner is likely to cause damage to the building of the 5th respondent and it was advised in Ext.P6 report to take adequate precautions to ensure the safety of the building of the 5th respondent. However, ultimately the Assistant Executive Engineer concluded that

construction shall be made by the petitioner only after necessary safeguards are taken. On going to know about Ext.P6 the petitioner submitted Ext.P7 dated 20.10.2006 before the Panchayat. In Ext.P7, the petitioner states that all safeguards to be directed by the Engineer to be deputed by the Panchayat will be taken by him at his own cost. He has further stated that he will be responsible for damages, if any which may be caused to the 5th respondent's house on account of the proposed construction. The request in Ext.P7 is that subject to his undertaking in Ext.P7, he be permitted to continue with the construction. But it appears that even before Ext.P7 reached the Panchayat the Panchayat has passed Ext.P8 final order dated 18.10.2006 prohibiting construction by the petitioner relying on Ext.P6 report of the Engineer itself.

2. Heard the submission of Sri. P.B.Suresh Kumar, the learned counsel for the petitioner and Sri.B.Harish Kumar, the learned Counsel for the 5th respondent. Having regard to the rival submissions addressed before me, I am of the view though it is necessary to avert any danger or damages to the building of the 5th respondent, the Panchayat was not justified in issuing Ext.P8 order prohibiting the construction of work by the

petitioner altogether.

3. The petitioner has already undertaken through Ext.P7 and has reported in this court also that he is ready to comply with any directions which may be issued by any Engineer to be deputed by the Panchayat in this context towards the safety of the 5th respondent's house and is also ready to compensate the 5th respondent adequately in the event of any damages being occasioned to the 5th respondent's house as a result of construction made by him. Under these circumstances, this writ petition will stand disposed of with the following directions:

i). The first respondent Panchayat will nominate a qualified Civil Engineer for determining as to what are the safeguards to be taken by the petitioner while he constructs the building so as to avert any danger or damage to the 5th respondent's house. The charges payable to that Engineer will be borne by the petitioner, who will faithfully comply with the all the directions of that Engineer.

ii). The petitioner will also submit an undertaking in the form of an sworn affidavit before the first respondent reiterating

his undertaking in Ext.P7 that he will compensate the 5th respondent fully if any damage is caused to the 5th respondent, the 5th respondent's building on account of reconstruction of his building on the strength of the permit be issued by the 5th respondent.

iii). The first respondent will comply with the above direction at his earliest and at any rate within three weeks of receiving a copy of this judgment. Upon receiving the direction by the Engineer nominated by the first respondent, the petitioner will comply with the direction regarding filing of an affidavit. The entire work will be overseen on a day -to- day basis by the Engineer who upon completion of the work will submit a report to the Panchayat. If the 5th respondent complains that some damages have been caused to her house on account of the construction, the Panchayat will seek and obtain a report from the Engineer on that complaint also. All the charges due to the engineer will be paid by the petitioner.

PIUS C.KURIAKOSE
Judge

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The work will be overseen by the Civil Engineer, who upon completion of the work will submit a report to the Panchayat. If the 5th respondent complains that some damages have been caused to her house on account of the construction, the Panchayat will seek and obtain a report from the Engineer on that complaint also.